

APPLICANT:
Plumtree Orthopaedic Associates, LLC

REQUEST: Special exception, special development, and variance to allow a medical clinic 39 feet high in the Residential Office District

HEARING DATE: October 23, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5564

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Plumtree Orthopaedic Associates, LLC

LOCATION: 109, 111, 113, 201 and 203 Plumtree Road, Bel Air
Tax Map: 56 / Grid: 2C / Parcels: 168, 169, 335, 176 and 431
Third (3rd) Election District

ZONING: RO / Residential Office

REQUEST: A special exception pursuant to Section 267-53H(9)(b) of the Harford County Code to allow a medical clinic; a Special Development for Service Use in the R/O District pursuant to Section 267-47.1 of the Code; and a variance pursuant to Section 267-36.1B Table VIIA to allow a height of 39 feet (35 feet allowed) for Retail Trade Services in the RO District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant for testified Kevin Small, offered and accepted as a landscape architect and planner, employed by Frederick Ward Associates, Inc.

Mr. Small described the property as consisting of five formerly residentially used lots, located between Maryland Route 24 and Maryland Route 924 on Plumtree Road. The size of all lots is 2.379 acres. All properties are currently zoned R/O, Residential Office.

According to Mr. Small the Applicant proposes to use the subject property for a medical clinic and offices. The five lots will be consolidated into one lot. The proposed medical building will contain approximately 34,500 square feet of space, and will be three stories in height.

In addressing the particular requirements of Code Section 267-53H(9)(b) Mr. Small testified that the proposed facility will be compatible with the surrounding neighborhood. In fact, no single family home is located either on the subject property or across Plumtree Road from the subject property. The homes that originally existed have all been demolished.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

Mr. Small believes that the proposal is compatible with the proposed Plumtree Center which will be located directly across Plumtree Road from the subject property. The proposal is also compatible with the proposed Caddie Homes development of three-story high condominium blocks to be located directly adjoining the property to the southeast side. Mr. Small believes that the proposed structure will be compatible with other development along Bel Air South Parkway. Virtually the only residential uses in the area are those located along west Plumtree Road, across Maryland Route 24 from the subject property. The nearest home is some distance away from the subject property.

Mr. Small believes the requirements of Section 267-53H(9)(b)(2) can also be met. Parking can be accommodated on the site and will be compatible with surrounding roads. A 10 foot wide landscape buffer shall be provided. Again, the only adjacent residential lots will be the proposed Caddie Homes development to the southeast.

One hundred (100) parking spaces are required, according to Mr. Small. One hundred thirty-eight (138) spaces are proposed.

Mr. Small then reviewed Code Section 267-9I, Limitations, Guides and Standards. He believes that the project will comply with all applicable standards as set forth in that section.

The proposal will not exacerbate existing traffic flow. Mr. Small referred to a Traffic Study which had earlier been filed with the application, (and marked as Applicant's Exhibit "6") which states:

"The Harford County Adequate Public Facilities Program requires all key signalized intersections to operate at an overall level of service "B" or better and all unsignalized intersections to operate with a side road approach level of service "D" or better within a development envelope area. The Study has shown that all of the key intersections meet these requirements."

Again, Mr. Small reiterated that all other conditions of the Limitations, Guides and Standards are met by the proposal.

In addressing the requested variance to the 35 foot height requirement, Mr. Small described the property, originally five residential lots, as unique. The resulting consolidated lot will be a "shallow" lot, with front and rear yard setbacks which limit the developable space. The resulting development area within the consolidated lot is a "long, bowling alley" configuration. It will have approximate dimensions of 95 feet by 485 feet.

If additional land had been acquired by the Applicant from the State Highway Administration at the corner of Plumtree Road and Maryland Route 24, additional flexibility in design would have existed. However, this land could not be acquired.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

The driveway entrance into the subject property is approximately 300 feet back from the Maryland Route 24 and Plumtree Road intersection. The driveway entrance accordingly poses additional constraints on the location of the proposed office building.

Furthermore, the elevation of the parcel decreases approximately 22 feet running from east to west. This eliminates the option of placing parking beneath the building.

A 4 foot variance, allowing the building to be built at a height of 39 feet, is the minimum variance necessary in order to build the proposed structure. Mr. Small notes that a variance in Zoning Appeal Case No. 5333, dated May 16, 2003, was granted for a height variance of 4.5 feet relating to property directly across Plumtree Road, the proposed Plumtree Center.¹

Mr. Small indicated that the present RO zoning of the property is not an appropriate zone as there is no remaining residential neighborhood.

Three-story condominium units are shown on the Caddie Homes property just to the south of and adjoining the subject property.

A vegetated buffer and landscaping will be created, with the existing trees along Plumtree Road to be retained if possible and supplemented with additional plantings. Adjoining properties will be shielded from light.

Next for the Applicant testified Beck Powell, offered and accepted as an architect. Mr. Powell is familiar with Harford County Development Regulations.

Mr. Powell believes the proposed office building is compatible with the existing residential neighborhood. Other structures in the area include buildings of two to three stories, with brick facades, terra cotta finish and flat roofs. The proposed building will be similar to those other buildings. He has determined that the building to be constructed on the subject property is similar to other buildings which are found in the area in size, color and facade characteristics. Furthermore, the design is compatible with the three-story condominium buildings which are to be built next door on the Caddie Homes property. The height will be about the same, although the three-story condominium unit may be higher than the proposed structure.²

¹ “The height of the proposed building is not unreasonable given the footprint of the building, the need for a commercially viable amount of space and the impacts associated with compliance with the International Building Code (confirmed by the Department of Planning and Zoning). The height variance request is only 4.5 feet and, due to distances, speed of traffic and surrounding uses will not result in adverse impacts.” (See Decision in Case No. 5333.)

² A review of the drawings of the proposed medical building shows little, if any, distinctive architectural detail or style. The testimony of the architect is accepted that it is compatible with other existing buildings. However, by that observation one can only conclude that the other buildings in the neighborhood are, also, without distinctive architectural features or style. Nevertheless, the Applicant meets the applicable standard.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune described the general nature of the area as containing a mix of commercial and institutional uses. No close residential structures of any nature exist in the area. The closest home is approximately 1,000 feet to the west of the proposed medical office building. The Festival of Bel Air Shopping Center lies within the general area of the subject property, as do banks and other commercial structures. The subject property is zoned residential office. The property is unique in that it is a redevelopment of existing residential lots. The resulting consolidated lot will have a long and narrow configuration. He believes that a 4 foot height variance should be granted. Mr. McClune also referred to the approved medical office building directly across Plumtree Road. A special exception and height variance was also approved for that location.

The subject property is unique, and the proposed use will provide a necessary service for residents in Harford County. There will be no adverse impact.

The Town of Bel Air had submitted a letter to the file which suggests that the building and associated parking:

“ . . . do not meet the County’s requirement that the structure be of a size, scale and facade compatible with the surrounding residential neighborhood.”

and that:

“In terms of the height variance, the applicant must show that the variances (sic) is necessary due to practical difficulty and unreasonable hardship. Based on the information provided to the Town, the warrants for approving the variance do not seem to be satisfied.”

No other testimony or evidence was given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Section 267-51 of the Harford County Development Regulations (Code), Purpose states:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 of the Code, General Regulations states:

- “A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.*
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.*

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

- D. *The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.*
- E. *In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”*

This special exception request is governed by Section 267-53H(9) of the Code:

“(9) *Health services and medical clinics.*

(b) *These uses may be granted in the RO District, provided that:*

[1] *The structure shall be of a size, scale and facade compatible with the surrounding residential neighborhood.*

[2] *All parking shall be accommodated on the site in a manner compatible with the surrounding roads and uses, and a landscaped buffer yard ten feet side shall be provided between the parking area and any adjacent residential lot.”*

Section 267-47.1 of the Code, Retail/Service/Office uses in the RO District, states:

“A. *Purpose. To provide opportunities for conversion of existing residential structures or the development of new structures for retail, service and office uses in predominantly residential areas. The purposed use of these development standards are to ensure that the structures and uses developed are compatible and in harmony with the neighboring residential communities.*

B. *Development standards.*

(1) *Design. An architectural rendering of the building facade and elevation of the structure shall be submitted to the Board. The rendering shall demonstrate how the project meets the following standards and objectives:*

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

- (a) *Redevelopment of existing residential structures. Redevelopment of existing residential structures shall be permitted provided that any physical modification is compatible and in harmony with the neighboring residential communities relative to architectural design, scale, building height and materials used in construction.*
 - (b) *Development of new buildings. New buildings developed for retail, service and office uses shall be designated to be compatible and in harmony with the neighboring residential communities relative to architectural design, scale building height and the materials used in construction. Elements to be considered in determining compatibility with neighboring residential communities shall include massing and building materials as well as cornice lines, window lines, roof pitch and entry.*
 - (c) *Design requirements. See Design Table VIIA.*
- (2) *Maximum building coverage. The maximum building coverage shall be 40% of the lot, and the maximum impervious surface shall be 65% of the lot.*
- (3) *Use limitations. The uses permitted under this section shall comply with the following:*
 - (a) *Enclosed building. All uses permitted shall be conducted within an enclosed building, except parking, loading, unloading or as otherwise permitted.*
 - (b) *Storage restriction. The outside storage of material or equipment shall not be permitted.*
 - (c) *Screening requirements. Parking, loading, unloading or other outdoor activity shall be screened from adjacent residential lots. Screening shall consist of landscaping, walls or solid fencing of at least 6 feet high which shall be continuous to prevent visibility of the area.*

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

- (d) *Hours of operation. Uses shall only be permitted to operate between the hours of 6:00 a.m. and 10:00 p.m., inclusive.*
- (4) *Landscaping. The landscaping shall, to the extent possible, preserve unique features and mature vegetation, especially large trees. Lawn and landscaped areas shall be maintained to preserve the residential character of the area. Landscaped buffer yards shall be planted in harmony with adjoining residences and in accordance with Section 267-28 of this chapter. A landscaping plan shall be submitted to the Board for review and approval.*
- (5) *Outside lighting. Outside lighting shall be so shaded, shielded, directed or maintained so that the lighting does not cause a glare or reflection on adjacent residential lots.*
- (6) *Ingress and egress. Any ingress or egress to the site shall be designed to provide the safest means of traffic flow.”*

Section 267-9I, Limitations, Guides and Standards is also applicable to this request and will be discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant, initially, requests a special exception to allow a medical clinic on the Applicant's 2.379 acre parcel of RO zoned land located at the southeast corner of Plumtree Road and Maryland Route 24.

Specific requirements applicable to such a request are found at Section 267-53H(9) of the Code as follows:

- (9) *Health services and medical clinics.*
 - (b) *These uses may be granted in the RO District, provided that:*
 - [1] *The structure shall be of a size, scale and facade compatible with the surrounding residential neighborhood.*

In fact, testimony adequately demonstrates that there is no existing residential neighborhood. Condominiums are planned to be built directly to the south of and adjacent to the property, or property which is now unimproved. The Applicant presented testimony through architect Beck Powell that the proposed medical building will be compatible in size, scale and facade with that planned residential development. The proposed medical building will also be compatible with other commercial uses in the area.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

[2] All parking shall be accommodated on the site in a manner compatible with the surrounding roads and uses, and a landscaped buffer yard ten feet wide shall be provided between the parking area and any adjacent residential lot.

As discussed above, the only planned residential development adjoining the property will be a potential condominium project to the southeast. A 10 foot landscape buffer will be provided on that side. Furthermore, testimony demonstrated that sufficient parking will be provided on site and it will be compatible with surrounding roads and uses.

Accordingly, the specific requirements of Section 267-53H(9) for a medical clinic have been met.

The Applicant also requests approval for Service Use in an RO/Residential District pursuant to Section 267-47.1 of the Harford County. That section is discussed as follows:

- A. Purpose. To provide opportunities for conversion of existing residential structures or the development of new structures for retail, service and office uses in predominantly residential areas. The proposed use of these development standards are to ensure that the structures and uses developed are compatible and in harmony with the neighboring residential communities.*
- B. Development standards.*
 - (1) Design. An architectural rendering of the building facade and elevation of the structure shall be submitted to the Board. The rendering shall demonstrate how the project meets the following standards and objectives:*

The Applicant has submitted an architectural rendering of the proposed structure. The building proposed is a 3 story brick facade which appears to be utilitarian in design with few if any distinctive features. The site plans shows proposed parking and street access.

- (a) Redevelopment of existing residential structures. Redevelopment of existing residential structures shall be permitted provided that any physical modification is compatible and in harmony with the neighboring residential communities relative to architectural design, scale, building height and materials used in construction.*

This is not a redevelopment of an existing structure. The Applicant proposes a new building.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

- (b) *Development of new buildings. New buildings developed for retail, service and office uses shall be designated to be compatible and in harmony with the neighboring residential communities relative to architectural design, scale building height and the materials used in construction. Elements to be considered in determining compatibility with neighboring residential communities shall include massing and building materials as well as cornice lines, window lines, roof pitch and entry.*

The Applicant presented testimony that the proposed structure is compatible with other new and proposed structures in the area. A residential use is proposed for the property immediately to the southeast side of the subject property.

- (c) *Design requirements. See Design Table VIIA.*

As suggested by the Staff Report, the proposal is in conformity with the design standards of Section 267-36.1B, except for the required height standard of 35 feet, to which the Applicant has requested a variance. The variance is addressed below.

- (2) *Maximum building coverage. The maximum building coverage shall be 40% of the lot, and the maximum impervious surface shall be 65% of the lot.*

The building coverage proposed is approximately 11.1% of the site. Impervious surface proposed is approximately 56% of the site.

- (3) *Use limitations. The uses permitted under this section shall comply with the following:*

- (a) *Enclosed building. All uses permitted shall be conducted within an enclosed building, except parking, loading, unloading or as otherwise permitted.*

All uses except parking and loading are proposed to be conducted within the building.

- (b) *Storage restriction. The outside storage of material or equipment shall not be permitted.*

No outside storage is proposed.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

- (c) *Screening requirements. Parking, loading, unloading or other outdoor activity shall be screened from adjacent residential lots. Screening shall consist of landscaping, walls or solid fencing of at least 6 feet high which shall be continuous to prevent visibility of the area.*

The Applicant proposes to screen the project from the proposed condominium development to be constructed on the property adjoining the subject property to the southeast. A condition of approval will be that the screening consist of landscaping, walls or solid fencing at least 6 feet in height and shall be continuous to prevent visibility of the area.

- (d) *Hours of operation. Uses shall only be permitted to operate between the hours of 6:00 a.m. and 10:00 p.m., inclusive.*

A condition of approval will include a limitation on hours of use.

- (4) *Landscaping. The landscaping shall, to the extent possible, preserve unique features and mature vegetation, especially large trees. Lawn and landscaped areas shall be maintained to preserve the residential character of the area. Landscaped buffer yards shall be planted in harmony with adjoining residences and in accordance with Section 267-28 of this chapter. A landscaping plan shall be submitted to the Board for review and approval.*

There are no unique features or mature vegetation identified on site. The property, in fact, retains little if any residential character, and much of the surrounding area has been redeveloped into commercial purposes. However, a landscaping plan has been submitted for review, and is approved, subject to further revisions by the Harford County Department of Planning and Zoning.

- (5) *Outside lighting. Outside lighting shall be so shaded, shielded, directed or maintained so that the lighting does not cause a glare or reflection on adjacent residential lots.*

Outside lighting shall be designed to reflect onto the subject site. The final landscaping plan shall include a lighting plan.

- (6) *Ingress and egress. Any ingress or egress to the site shall be designed to provide the safest means of traffic flow.*

The site plan shows one entrance located on the westerly side of the property, a significant distance from the Maryland Route 24 and Plumtree Road intersection. The present location is accordingly found to be appropriate.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

Accordingly, it is found that the Applicant has met the specific requirements of Section 267-47.1.

The Applicant must further show that its use is not adversely impacted by consideration of the more generalized considerations of Section 267-9I, Limitations, Guides and Standards. The proposed use is discussed in light of these considerations as follows:

- (1) *The number of persons living or working in the immediate area.*

The Staff Report indicates that the requested use provides a necessary service to residents living in the area, although no evidence to support this suggestion was presented. Nevertheless, it is found that surrounding uses include many commercial uses including shopping centers, individual retail uses and office buildings. Furthermore, the use is directly located on Maryland Route 24, which is a major arterial. Accordingly, it is found that the use will not have an adverse impact on the number of persons living or working in the area, nor will it be adversely impacted in turn by people living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The entrance to the property will be off Plumtree Road. Plumtree Road terminates on each end at a signalized intersection. The Traffic Study provided by the Applicant shows that the proposal will not adversely impact traffic in the area which, admittedly, is already at relatively high levels. While facilities for pedestrians were not discussed during the hearing, it would appear unlikely, given the present uses in the area and the lack of residential structures, that there would be noticeable pedestrian use of Plumtree Road.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The property is zoned for residential office uses. Much of the surrounding neighborhood is in commercial use at present. There should be no adverse impact on the neighborhood or community. The fiscal impact, if any, on the County should be positive.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such impact was identified. Given the proposed use, it is unlikely that any such adverse effect will be generated.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The local Sheriff's Office and the Maryland State Police will provide police protection. The Abingdon and Bel Air Volunteer Fire Departments will provide fire protection and emergency services to the site. Public water and sewer will service the site. A company of the Applicant's choice will handle trash collection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is generally consistent with accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal conforms with the Harford County Master Land Use Plan, which designates the property as high intensity.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No sensitive environmental features have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Accordingly, the proposal is found to comply with both the specific and general requirements of the Code.

Finally, the proposal must be reviewed in light of the guidance given by Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). As a special exception, the proposed use shares the presumption that it is in the best interest of the general welfare and is accordingly presumptively valid. See Peoples Counsel v. Mangione, 85 Md. App. 738, 584 A.2d 1318 (1991). A special exception is analogous to a permitted use and is permitted in its particular district, provided all specific and general conditions are met.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

Furthermore, and perhaps as importantly, there must be a finding of no greater harm at the proposed location than there would be, by this or a similar use, in any other permitted location within the zone.

It is accordingly found, for reasons discussed in more detail above, that the proposed use will cause no more of an adverse impact at the proposed site than it would at any other location within the zone.

It is also noted that as a special exception³, the proposed use has been legislatively predetermined to be compatible with other existing uses in its particular zone, provided all general specific requirements are met. Such requirements having been met. Accordingly, the Schultz. v. Pritts standard having been applied and with the use found to be in conformity, the proposed special exception for a medical clinic, and special development for service use, must be approved.

However, the Applicant has not made the showing necessary to entitle it to a height variance.

The Applicant is entitled to a building 35 feet in height as a matter of right. It wishes to construct a 39 foot high office building, requiring a 4 foot height variance. In order to do so the Applicant must show some unusual feature of its property, some difference from the nature of the surrounding properties. The Applicant must then demonstrate that the uniqueness or peculiarity of the property causes the pertinent zoning provision (35 foot height limitation) to impact disproportionately upon the subject property. This is the first step. If this finding cannot be made, then the variance request must be denied. If a finding favorable to the Applicant can be made, then the Applicant must show that an unreasonable hardship (or practical difficulty) results from this disproportionate impact of the ordinance caused by the property's uniqueness. See Cromwell v. Ward, 102 Md. App. 691 (1995).

In support of its request, the Applicant argues that the subject property is long and narrow, and therefore unique. If the property were of more standard dimensions, the Applicant argues, the requested height variance would not be necessary as the building could be wider, longer, or deeper, or some other configuration which would not require a 39 foot height. However, a review of the site plan shows a building which seems to fit adequately on the lot, and which will constitute a use which has more than adequate parking. In fact, much more than the minimum parking is provided. It does not appear, contrary to the testimony of the Applicant, that there is anything unique about the property so as to allow a finding that the Applicant has met the first step of the variance review process. Indeed, it is difficult to see how the zoning provision at issue – the 35 foot height limitation – somehow impacts disproportionately upon this property. All similarly zoned properties are impacted by a 35 foot height limitation.

³ Special development requests enjoy the same presumption of compatibility as do special exceptions.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

The Applicant is not precluded from doing something other individuals in the zone can do. For instance, the Applicant is not impacted by two front yard setbacks when most other property owners of similar properties are not so impacted. The Applicant is not impacted by extensive wetlands when other properties are not similarly impacted. The Applicant is not impacted, for instance, by overhead power lines which may prohibit its ability to construct a building without impacting a setback.⁴ Indeed, the Applicant is impacted in no way differently than other surrounding property owners. The 35 foot height limitation applies to all. The Applicant accordingly desires something that it is not entitled to as a matter of right, and attempts to suggest, unsuccessfully, some unusual feature of his property as justification.

Even assuming that a 95 foot deep by 485 foot long lot is somehow unique, it does not rise to a level which justifies the resulting variance. If more interior square footage is desired the footprint of the building could be somewhat deeper. This would, perhaps, decrease existing parking. However, as stated above, the Applicant exceeds the required parking by almost 40 parking spaces. Surely, the Applicant could afford to lose a few spaces in order to enlarge its footprint.

Furthermore, the Applicant relies upon no statutory right to the 4 foot variance. In essence, it suffers an impact of no more and no less than any other individual in the zone. It has not made a showing of its property being so unique so as to cause a disproportionate impact upon it by the height limitation.

Accordingly, it is found that the Applicant has failed to make the necessary showing for the requested height variance.

Note is made of the argument that as the property across Plumtree Road – the proposed, but not built, Plumtree Center – was given a height variance two years ago, the Applicant is now entitled to one as well. This argument is not compelling and it is rejected. The two properties are different. The granting of a variance in one case cannot be used as a precedent for the granting of a variance in a second, subsequent and different case. The Applicant has a property well situated and suited for its proposed use. It is taking advantage of the RO zoning by consolidating properties into a relatively large tract. It will be entitled to build a significantly sized medical clinic with adequate parking, good road access, and reasonable buffering without the variance. While it does not gain the specific relief which the variance would represent, it, conversely suffers no loss of right by this denial.

⁴ The Applicant requests no setback variance.

Case No. 5564 – Plumtree Orthopaedic Associates, LLC

CONCLUSION:

It is accordingly recommended that the requested height variance be denied.

It is further accordingly recommended that the requested special exception and requested special development for service use be granted, subject to the following conditions:

1. The Applicant shall submit detailed site plans in general conformance with the site plan approved by the Board for review and approval through the Development Advisory Committee (DAC).
2. The existing parcels shall be combined into one lot.
3. The Applicant shall obtain all necessary permits and inspections for the construction of the building and the development of the site.
4. The Applicant shall submit a detailed landscape and lighting plan to the Department of Planning and Zoning for review and approval prior to the issuance of building permits. All outside lighting shall be designed to reflect onto the subject site.
5. Screening around the proposed residential condominium project shall consist of landscaping, walls, or solid fencing at least 6 feet in height and shall be continuous to prevent visibility of the area.
6. The outside storage of material and/or equipment is prohibited.
7. The medical office building be open for business only between the hours of 6:00 a.m. and 10:00 p.m.

Date: January 8, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 6, 2007.